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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6
7 ASIF KUMANDAN, et al.,

8 Plaintiffs,

9 v.

10 GOOGLE LLC, et al.,

11 Defendants.

Case No. 19-cv-04286-BLF

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
DOCUMENTS UNDER SEAL**

[Re: ECF No. 223]

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13 Before the Court is Plaintiffs' administrative motion seeking to seal documents submitted
14 with Plaintiffs' Motion for Class Certification. *See* ECF No. 223. Defendants Google LLC and
15 Alphabet Inc. (together "Google") submitted a statement in support. *See* ECF No. 226. Plaintiffs
16 did not respond to Defendants' statement. For the reasons stated below, the motion is GRANTED
17 IN PART and DENIED IN PART.

18 **I. LEGAL STANDARD**

19 "Historically, courts have recognized a 'general right to inspect and copy public records and
20 documents, including judicial records and documents.'" *Kamakana v. City and Cnty. of Honolulu*,
21 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc 'ns, Inc.*, 435 U.S. 589, 597
22 & n.7 (1978)). Consequently, filings that are "more than tangentially related to the merits of a case"
23 may be sealed only upon a showing of "compelling reasons" for sealing. *Ctr. for Auto Safety v.*
24 *Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only tangentially
25 related to the merits may be sealed upon a lesser showing of "good cause." *Id.* at 1097.

26 "Under the compelling reasons standard, a district court must weigh relevant factors, base
27 its decision on a compelling reason, and articulate the factual basis for its ruling, without relying on
28 hypothesis or conjecture." *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 679 (9th Cir.

1 2010) (internal quotation marks omitted). “In general, compelling reasons sufficient to outweigh
2 the public's interest in disclosure and justify sealing court records exist when such court files
3 might . . . become a vehicle for improper purposes, such as the use of records to gratify private spite,
4 promote public scandal, circulate libelous statements, or release trade secrets.” *Algarin v.*
5 *Maybelline, LLC*, No. 12CV3000 AJB DHB, 2014 WL 690410, at *2 (S.D. Cal. Feb. 21, 2014)
6 (internal quotation marks omitted). “The mere fact that the production of records may lead to a
7 litigant's embarrassment, incrimination, or exposure to further litigation will not, without more,
8 compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179. Courts have found that a party
9 has demonstrated compelling reasons warranting sealing where “confidential business material,
10 marketing strategies, product development plans could result in improper use by business
11 competitors seeking to replicate [the company's] business practices and circumvent the time and
12 resources necessary in developing their own practices and strategies.” *Algarin*, 2014 WL 690410,
13 at *3.

14 Sealing motions filed in this district also must be “narrowly tailored to seek sealing only of
15 sealable material, and must conform with Civil L.R. 79-5(d).” Civil L.R. 79-5(b). Under Civil
16 Local Rule 79-6(d), the submitting party must attach a “proposed order that is narrowly tailored to
17 seal only the sealable material” which “lists in table format each document or portion thereof that is
18 sought to be sealed.” In addition, a party moving to seal a document in whole or in part must file a
19 declaration establishing that the identified material is “sealable.” Civ. L.R. 79-5(d)(1)(A).
20 “Reference to a stipulation or protective order that allows a party to designate certain documents as
21 confidential is not sufficient to establish that a document, or portions thereof, are sealable.” *Id.*
22 Where the moving party requests sealing of documents because they have been designated
23 confidential by another party or a non-party under a protective order, the burden of establishing
24 adequate reasons for sealing is placed on the designating party or non-party. Civ. L.R. 79-5(e). The
25 moving party must file a proof of service showing that the designating party or non-party has been
26 given notice of the motion to seal. *Id.* “Within 4 days of the filing of the Administrative Motion to
27 File Under Seal, the Designating Party must file a declaration . . . establishing that all of the
28 designated material is sealable.” Civ. L.R. 79-5(e)(1). “If the Designating Party does not file a

1 responsive declaration . . . and the Administrative Motion to File Under Seal is denied, the
 2 Submitting Party may file the document in the public record no earlier than 4 days, and no later than
 3 10 days, after the motion is denied.” Civ. L.R. 79-5(e)(2).

4 II. DISCUSSION

5 This Court follows numerous other district courts within the Ninth Circuit in concluding that
 6 the compelling reasons standard applies to motions to seal documents relating to class certification.
 7 *See, e.g., Yan Mei Zheng v. Toyota Motor Corp.*, No. 17-CV-06591-BLF, 2019 WL 6841324, at *1
 8 (N.D. Cal. Dec. 16, 2019); *Wetzel v. CertainTeed Corp.*, No. C16-1160JLR, 2019 WL 1236859, at
 9 *3 (W.D. Wash. Mar. 18, 2019) (“[S]ince Chrysler, district courts that have addressed the issue have
 10 regularly found that the compelling reasons standard applies to motions to seal exhibits attached to
 11 motions for class certification.”); *McCurley v. Royal Seas Cruises, Inc.*, No. 17-CV-00986-BAS-
 12 AGS, 2018 WL 3629945, at *2 (S.D. Cal. July 31, 2018) (“[C]ourts apply the compelling reasons
 13 standard to a motion to seal a document filed in connection with a motion for class certification.”);
 14 *In re Seagate Tech. LLC*, 326 F.R.D. 223, 246 (N.D. Cal. 2018) (applying compelling reasons
 15 standard to documents relating to class certification); *Weisberg v. Takeda Pharm. U.S.A., Inc.*, No.
 16 CV 18-784 PA (JCX), 2018 WL 6252458, at *2 (C.D. Cal. July 3, 2018) (“Because the Motion for
 17 Class Certification is more than tangentially related to the merits of the case, the compelling reasons
 18 standard applies in determining whether to grant the Application to Seal.”).

19 Plaintiffs move to file documents or portions of documents under seal as part of its motion
 20 for class certification because Google has designated these documents as “Confidential” or “Highly
 21 Confidential” pursuant to the parties’ protective order. *See* ECF No. 223 ¶¶ 5-7. Plaintiffs also state
 22 that one of the documents contains proprietary analysis and study design.” *Id.* ¶ 6.

23 Google argues that compelling reasons exist for sealing portions of the submitted materials.
 24 ECF No. 226, at 8. Google argues that portions of documents containing (1) information about the
 25 operation of Google Assistant are sealable because, if disclosed, could be a source of non-public
 26 technical and business information that competitors could use to harm Google’s competitive
 27 standing; (2) details of business opportunities and risks are sealable because they contain technical
 28 business planning and financial information that, if disclosed, could cause economic harm to Google

1 and provide an unfair advantage to competitors; and (3) information concerning the profits and
 2 losses associated with Google Assistant are sealable because they contain sensitive, confidential
 3 financial information that, if disclosed, could cause Google competitive harm. *Id.* at 8-9. Google
 4 further argues that the portions of the documents Google seeks to seal are sealable because their
 5 disclosure without context could cause harm to Google by providing an incomplete and misleading
 6 picture of Google’s practices and capabilities. *Id.* at 9.

7 The Court finds that Google has demonstrated compelling reasons for sealing the portions
 8 of documents as set forth below.

ECF No.	Document	Portions to Seal	Result and Reasoning
ECF No. 223-3	Plaintiffs’ Memorandum of Law ISO Motion for Class Certification	Highlighted portions on pages i, 2, 4-13, 15, 17-22	GRANTED. These portions of the document contain confidential and commercial information about (1) the operation of Google Assistant; (2) business opportunities and risk; and (3) details of Google’s understanding of the profits or losses associated with Google assistant. Decl. of Nino Tasca (“Tasca Decl.”) ¶¶ 3, 5, ECF No. 226-1.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 2 (GOOG-ASST-00232470)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 3 (GOOG-ASST-03004766)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 4 (GOOG-ASST-00236429)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean,	Document	GRANTED. This document contains confidential and

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	Exhibit 5 (GOOG-ASST-00245866)		highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 6 (GOOG-ASST-00245987)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 7 (GOOG-ASST-00256229)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 8 (GOOG-ASST-02981998)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 9 (GOOG-ASST-00221881)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 10 (GOOG-ASST-00001303)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 11 (GOOG-ASST-00257457)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 12 (GOOG-ASST-00228874)	Document	GRANTED. This document contains confidential and highly sensitive proprietary information about business opportunities and risks. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean,	Document	GRANTED. This document contains confidential and

1		Exhibit 13 (GOOG-ASST-03045622)		highly sensitive proprietary and commercial information about the profits or losses of Google Assistant. Tasca Decl. ¶¶ 3, 5.
2	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 14 (GOOG-ASST-03045632)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the profits or losses of Google Assistant. Tasca Decl. ¶¶ 3, 5.
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4	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 15 (GOOG-ASST-00233284)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
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6	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 16 (GOOG-ASST-00244130)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
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8	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 17 (GOOG-ASST-03026660)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
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10	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 18 (GOOG-ASST-00231206)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
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12	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 19 (GOOG-ASST-00003331)		DENIED. Google did not request the sealing of this document.
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14	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 20 (GOOG-ASST-00031411)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
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16	ECF No. 223-4	Declaration of Margaret MacLean,	Document	GRANTED. This document contains confidential and
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	Exhibit 21 (GOOG-ASST-03026477)		highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 22 (GOOG-ASST-03026503)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 23 (GOOG-ASST-03026518)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 24 (GOOG-ASST-00003555)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 28 (GOOG-ASST-03036619)	Document	DENIED. Google states that the document “[c]ontains information considered confidential by Plaintiffs Melissa Spurr.” ECF No. 226, at 4. Plaintiffs state that the document was “[d]esignated by Google as ‘Confidential’ pursuant to the Protective Order.” ECF No. 223, at 3. Neither statement provides adequate justification to seal the document.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 29 (GOOG-ASST-03026521)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 30 (GOOG-ASST-03026522)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of	Document	GRANTED. This document

1		Margaret MacLean, Exhibit 31 (GOOG- ASST-03034181)		contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
2	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 32 (GOOG- ASST-03037485)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
3	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 33 (GOOG- ASST-00001403)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
4	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 34 (GOOG- ASST-00217138)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
5	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 35 (GOOG- ASST-03030779)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant and contains personally identifiable information of Plaintiff Robert Spurr. Tasca Decl. ¶¶ 3, 5.
6	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 36 (GOOG- ASST-00023627)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
7	ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 37 (GOOG- ASST-03030863)	Document	DENIED. Google states that the document “[c]ontains information considered confidential by Plaintiff Steven Robert Spurr.” ECF No. 226, at 5. Plaintiffs state that the document was “[d]esignated by Google as ‘Confidential’ pursuant to the Protective Order.” ECF No. 223, at 4.
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			Neither statement provides adequate justification to seal the document.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 38 (GOOG-ASST-03030950)	Document	DENIED. Google states that the document “[c]ontains information considered confidential by Plaintiff Steven Robert Spurr.” ECF No. 226, at 5. Plaintiffs state that the document was “[d]esignated by Google as ‘Confidential’ pursuant to the Protective Order.” ECF No. 223, at 4. Neither statement provides adequate justification to seal the document.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 39 (GOOG-ASST-00232904)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about business opportunities and risks. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 40 (GOOG-ASST-00025679)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 41 (GOOG-ASST-00022753)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 43 (GOOG-ASST-00217177)	Document	GRANTED. This document contains confidential and highly sensitive proprietary information about business opportunities and risks. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 44 (GOOG-ASST-02989251)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean,	Document	GRANTED. This document contains confidential and

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	Exhibit 45 (GOOG-ASST-00256167)		highly sensitive proprietary information about business opportunities and risks. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 46 (GOOG-ASST-00244117)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 47 (Excerpts from the deposition of Francoise Beaufays dated April 22, 2022)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 48 (Excerpts from the deposition of Francoise Beaufays dated April 12, 2022)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 49 (Excerpts from the deposition of Francoise Beaufays dated April 22, 2022)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 50 (Excerpts from the deposition of Brian Horling)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 51 (Excerpts from the deposition of Caroline Kenny)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google Assistant. Tasca Decl. ¶¶ 3, 5.
ECF No. 223-4	Declaration of Margaret MacLean, Exhibit 52 (Excerpts from the deposition of Terry Tai)	Document	GRANTED. This document contains confidential and highly sensitive proprietary and commercial information about the operation of Google

III. CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART Plaintiff's Administrative Motion to Seal (ECF No. 223). Within ten (10) days of this order, Plaintiffs SHALL file public, non-redacted versions of Exhibits 19, 28, 37, and 38 to the Declaration of Margaret MacLean filed at ECF No. 223-4, except that Plaintiffs SHALL redact information consistent with Federal Rule of Civil Procedure 5.2.

IT IS SO ORDERED.

Dated: September 16, 2022



BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

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